

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

HAIDER SALAH ABDULRAZZAK, Petitioner, vs. BRENT FLUKE, WARDEN AT MIKE DURFEE STATE PRISON, and ATTORNEY GENERAL FOR THE STATE OF SOUTH DAKOTA, Respondents.	4:20-CV-04154-RAL ORDER GRANTING PLAINTIFF'S MOTION TO APPEAL WITHOUT PREPAYMENT OF FEES
--	---

Petitioner, Haider Salah Abdulrazzak, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Doc. 1. Judgment was entered against Abdulrazzak, and he filed a notice of appeal. Docs. 29 and 34. Abdulrazzak now moves to appeal without prepayment of fees and has filed his prisoner trust account report. Docs. 32 and 33.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the PLRA do not apply to habeas corpus actions. Malave v. Hedrick, 271 F.3d 1139, 1140 (8th Cir. 2001). To determine whether a habeas petitioner qualifies for in forma pauperis status, the court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S.C. § 1915(a)(1), (3).

Abdulrazzak's prisoner trust account report indicates that he has average monthly deposits of \$78.08 and an average monthly balance of \$52.28. Doc. 33. Based on this

information, the Court finds that Abdulrazzak has insufficient funds to pay the \$505.00 appellate filing fee, and his motion to appeal without prepayment of fees, Doc. 32, is granted.

Accordingly, it is

ORDERED that Abdulrazzak's motion to appeal without prepayment of fees, Doc. 32, is granted.

DATED August 9th, 2021.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE